

## **9 FAM 42.62 Procedural Notes**

(TL:VISA-506; 12-11-2002)  
(Office of Origin (CA/VO/L/R))

### **9 FAM 42.62 PN1 Preparing for Appointment with Applicant**

(TL:VISA-395; 04-15-2002)

a. When appearing at the appointed time for the formal visa application, an applicant is entitled to receive prompt attention. The post should pull and review the following prior to the appointment, preferably the preceding day:

(1) Form DS-230 I, *Application for Immigrant Visa and Alien Registration, Part I, Biographic Data*; and

(2) Any documents that may have been filed in the A-Z file.

b. The consular officer shall send unclassified material to the document checker for review. The consular officer shall review classified material.

### **9 FAM 42.62 PN2 Class Namechecks for Immigrant Visa Applicants**

(TL:VISA-333; 11-15-2001)

The post must namecheck all immigrant visa applicants on the CLASS system. Although the National Visa Center (NVC) performs a preliminary CLASS check on applicants before sending files to posts abroad, the consular officer must update this clearance by performing a final CLASS check immediately prior to the applicant's interview date.

## **9 FAM 42.62 PN3 U.S. Criminal Records Checks**

### **9 FAM 42.62 PN3.1 Namechecking Applicants Through the FBI**

*(TL:VISA-333; 11-15-2001)*

NVC, through the FBI Liaison, conducts checks against the FBI's National Crime Information Center (NCIC) and Interstate Identification Index (III) for all immigrant visa applicants over the age of sixteen (16) and under the age of one hundred (100). Posts are also required to conduct the same check, using the VISAS HAWK procedure (see 9 FAM 42.62 PN3.6-1), on beneficiaries of all petitions approved at post or at an INS overseas office, as well as beneficiaries of fiancé petitions. Posts are also required to conduct NCIC namechecks on derivative beneficiaries whose names are not included on the petition. NCIC checks for refugee and asylee applicants are not required. Consular officers cannot issue an immigrant visa before receiving a response to its clearance request.

### **9 FAM 42.62 PN3.2 Validity of Namechecks**

*(TL:VISA-333; 11-15-2001)*

There is no fixed expiration date on an NCIC check once it has been completed. If the applicant has never been to the United States, the check need never be done again. Officers should exercise judgment on any clearance that is more than one year old. If the officer has reason to believe the applicant was in the United States since the clearance, the officer should update the clearance. Officers should use discretion and any available evidence at hand in determining whether to submit a VISAS HAWK (see 9 FAM 42.62 PN3.6-1) to update the check.

### **9 FAM 42.62 PN3.4 Using NCIC-III Index Records**

*(TL:VISA-333; 11-15-2001)*

Once the responses are received from NCIC, the FBI liaison at NVC reviews them and discards non-matching records. For applicants with no valid hits, that is noted on the appropriate data screen in the automated case file. No documentation goes into the paper file. If the response generates a positive hit, the printed "index record," marked "law enforcement sensitive," (see 9 FAM 42.62 PN3.5) is included in the case file along with a fingerprint card (except for the ten fingerprint pilot posts, which have their own supply) for the post to collect the prints and return the card to the FBI. See 9 FAM 42.67 Notes and Procedural Notes for instructions on taking and submitting fingerprints.

## **9 FAM 42.62 PN3.5 "Law Enforcement Sensitive" (LES) NCIC-III Information**

### **9 FAM 42.62 PN3.5-1 Defining "LES" Information**

*(TL:VISA-333; 11-15-2001)*

a. The FBI designates "law enforcement sensitive" ("LES") any unclassified information whose disclosure could jeopardize or seriously harm law enforcement activities. All information received through NCIC and III namechecks or via a fingerprint check is considered "law enforcement sensitive".

b. The FBI has established strict rules on handling, storing and disclosing this information. The FBI periodically audits users with access to "LES" information to ensure policy and procedures are adhered to.

### **9 FAM 42.62 PN3.5-2 Access to "LES" Information**

*(TL:VISA-333; 11-15-2001)*

a. Only employees with a need to know should have access to "LES" information. Need to know is granted to individuals at post whose jobs require them to handle criminal history records. This includes officers, FSN, PIT and AFM employees with IV and DV processing responsibilities.

b. "LES" information must not be left in areas where unauthorized persons may access it. Likewise, "LES" information should not be discussed with persons who do not have a need to know. As part of a visa record, a criminal history record is protected against unauthorized disclosure under INA 222(f). Procedures for maintaining the confidentiality of visa records may be found in 9 FAM 40.4. All employees working with "LES" information must be briefed using the DS briefing paper "Requirements for the Protection of NCIC Criminal History Information as Law-enforcement Sensitive."

### **9 FAM 42.62 PN3.5-3 Storage and Destruction of "LES" Information**

*(TL:VISA-333; 11-15-2001)*

a. "LES" information must be stored in a secure area. This requirement can be satisfied by filing the information in a locked cabinet, or by keeping it in an office area secured by cypher lock and accessible only to authorized employees.

b. "LES" information must be destroyed by burning or shredding. "LES" information on diskettes or hard drives must be overwritten (i.e., unconditionally reformatted), degaussed, or physically destroyed.

#### **9 FAM 42.62 PN3.5-4 Dissemination of "LES" Information**

*(TL:VISA-333; 11-15-2001)*

a. A Post may disseminate "LES" information (including details of an applicant's criminal history record) to INS and other posts only when the information is necessary for the administration or enforcement of U.S. law. For example, criminal history records may be sent to the INS with a waiver request, or disclosed to another post or INS office inquiring about a CLASS lookout entry. Any further distribution of "LES" information must be cleared with the RSO.

b. Posts must log where and when they disseminate "LES" material. This log may be a page stapled to a category one-refusal file. Logs must be retained for a minimum of two years, and may be requested from post during a FBI audit. The log must contain:

(1) The name of the subject, the NCIC Index Record Number (FBI number);

(2) To whom and on what date the information was disclosed; and

(3) The name of the person sending it.

c. The FBI does not permit information obtained through a namecheck to be transmitted via e-mail. If information obtained through an emergency namecheck indicates a possible hit, this information must be faxed to the requesting individual and only when the individual receiving the namecheck request acknowledges he or she is waiting by the receiving fax machine.

#### **9 FAM 42.62 PN3.5-5 Certification**

*(TL:VISA-333; 11-15-2001)*

The consular officer in charge of the IV and/or DV Section must be responsible for the proper handling of all "LES" information. The consular officer in charge must sign a certification stating he or she has read the DS briefing paper mentioned in 9 FAM 42.62 PN3.5-2 and have briefed U.S. and FSN subordinates having access to "LES" information. NVC will keep a roster of IV chiefs to establish accountability for FBI auditors.

#### **9 FAM 42.62 PN3.5-6 Directing Questions to the Department**

*(TL:VISA-333; 11-15-2001)*

Posts should direct questions on the protection, storage or dissemination of "LES" information to CA/VO/F/P and DS/OA/SYS.

## **9 FAM 42.62 PN3.6 Emergency Namechecks**

### **9 FAM 42.62 PN3.6-1 VISAS HAWK Cables**

(TL:VISA-395; 04-15-2002)

a. Posts should use the VISAS HAWK cable to request emergency namechecks. (E-mail requests should only be used in truly emergency cases (see 9 FAM 42.62 PN3.6-2)), NVC sends cable responses to VISAS HAWK messages the day after receipt. Posts should use the VISAS HAWK to request NCIC-III namechecks on beneficiaries of petitions filed and approved at post. The cable should be sent directly to NVC (it is not necessary to include the department as an action or information addressee).

b. The caption line and paragraph one should both read "VISAS HAWK". The message may include more than one case. Each applicant should be identified by at least a two-line entry, with the name (last, first, middle) followed by any alias(es), if any, (also last, first, middle). If possible, the alias(es) should also appear on the first line. The date and place of the applicant's birth and the applicant's sex should appear on the following line. The date of birth is essential in order to obtain a valid NCIC check. When a case is received with one or more missing DOB, the NVC FBI liaison will highlight the applicant's name in the file with a stamp "No NCIC Check--date of birth incomplete", and will return it to post with details on those still needing an NCIC check. When the post receives the Form DS-230, *Application for Immigrant Visa and Alien Registration*, and confirms that the applicant is within the NCIC age range, it then sends a VISAS HAWK with the DPB to obtain the NCIC check.

### **9 FAM 42.62 PN3.6-2 E-mail Requests**

(TL:VISA-333; 11-15-2001)

Posts should only send e-mail requests in truly emergency cases. The less this channel is used, the better and quicker service NVC can provide. The e-mail message should be sent to: NVC cable unit. The e-mail message must provide the name of the post and the requesting consular officer. The post must provide the same identifying information for the applicant indicated in 9 FAM 42.62 PN3.6-1 as well as the reason for the emergency request. E-mail is checked every morning and a response is sent by close of business that day.

## **9 FAM 42.62 PN3.6-3 Consular Officer Must Make the Request**

(TL:VISA-333; 11-15-2001)

To assure that NCIC checks are requested only for IV applicants and by authorized personnel, only a consular officer may generate a VISAS HAWK or emergency namecheck e-mail request.

## **9 FAM 42.62 PN3.6-4 NCIC Namechecks for Derivative Aliens**

(TL:VISA-395; 04-15-2002)

NVC plays no role in the assignment of following-to-join cases. It does not maintain records of these cases nor conduct namechecks for those whose names were not included on the Form I-130, *Petition for Alien Relative*. Posts must, therefore, initiate VISAS HAWK namechecks for these beneficiaries. Namechecks are valid for one year, and applicants who delay processing may require new namechecks.

## **9 FAM 42.62 PN4 Functions Preliminary to Interview**

### **9 FAM 42.62 PN4.1 Initial Duties of Document Checker**

(TL:VISA-333; 11-15-2001)

When the applicant presents the documents, the post must check the documents for completeness and legibility. The document checker should ensure each question on Form DS-230 I and II, *Application for Alien Registration and Immigrant Visa*, has been answered. If a question does not apply, posts should write "not applicable" or "NA" in the space for the answer. (For example, some questions do not apply to small children. Posts should not use dashes or Xs (except when marking "yes-no" boxes). If Form DS-230 is illegible or incomplete, the document checker shall return it to the applicant for completion or give the applicant a new form to be completed legibly. If necessary, the document checker should assist the applicant in completing the application.

## **9 FAM 42.62 PN4.2 Paying Application Fee**

(TL:VISA-333; 11-15-2001)

a. When the medical forms and other documents have been placed in logical order and the Form DS-230 I and II, *Application for Alien Registration and Immigrant Visa*, is complete and legible, the alien shall take the form to the cashier and pay the application fee. The alien must pay before the interview. [See 9 FAM 42.62 PN4.2 below.] In situations described in 9 FAM 42.67 N1.1-1, the cashier shall not collect a new application fee. For some posts, the application fee will have already been collected in the United States before the case was forwarded to post. This will be indicated by a green ink stamp on the front of the DS-230 Part I.

b. After the fee has been paid, the document checker shall give the documents, including Form DS-230 I and II, the medical forms, applicable printouts from the automated system and any papers from the A-Z file to the consular officer who will interview the applicant.

## **9 FAM 42.62 PN5 Visa Interview**

(TL:VISA-506; 12-11-2002)

The interview with the consular officer is the most significant part of the visa issuing process. It is particularly important from the point of view of full and correct application of the law. Section 237 of Public Law 106-113 *and subsequent legislation* requires that the Department establish a policy under which immediate relative [and fiancé(e)] visas be processed within 30 days of receipt of the necessary information from the applicant and the INS, all other family-based immigrant visas must be processed within 60 days. The Department expects all posts to strive to meet the 30/60 day requirements.

## **9 FAM 42.62 PN6 Interview Even if Documentation is Missing**

(TL:VISA-59; 05-15-1992)

a. In addition to the inconvenience and expense caused to the alien (particularly an alien applying with family members), it is generally inefficient for the post if an application is not taken and the interview not conducted on the appointment date. In a busy post, the number of daily interviews is set to maximize the use of space and personnel. A canceled interview results in

a gap in that day's productivity without gain, since the interview must be rescheduled for another day. In addition, there is no guarantee that the alien will be found eligible the second time around. Rescheduling causes administrative backlogs, which, in turn, result in lost time answering correspondence and responding to telephone inquiries.

b. As a general rule, therefore, consular officers should accept applications from and interview all applicants appearing on the appointed date. If an applicant fails to present all of the required documentation, the applicant should nevertheless pay the application fee and be interviewed by the consular officer who must then refuse the application under INA 221(g). The consular officer should tell the applicant or a member of the family to mail or bring in the missing documentation, and also the issuance fee, and make clear that the visa(s) will be issued immediately if the documentation is found acceptable. In rare instances, the consular officer may decide not to collect the fee and interview the applicant, but only a consular officer may make this decision. Generally, permitting such a decision to be made by anyone else would be an abdication of the officer's responsibilities.

## **9 FAM 42.62 PN7 Completing Form DS-230, Application for Immigrant Visa and Alien Registration in Language Other Than English**

(TL:VISA-395; 04-15-2002)

To assist the INS, when an applicant completes Form DS-230 I and II, *Application for Immigrant Visa and Alien Registration* in a language other than English, the following items must appear on the applicant's Form DS-230 I and II in the manner indicated:

- (1) Age—in Arabic numerals;
- (2) Occupation—translated into English;
- (3) Final address in the United States—translated into English unless the Latin alphabet is used;
- (4) Past places of residence—translated into English unless the Latin alphabet is used;
- (5) Claim of exemption from exclusion—completed in English;
- (6) Parents' name—in English version of name; and
- (7) Any explanations or amplification of yes-no questions or any other questions must be in English. (The document checker should normally make these translations on Form DS-230 I and II.)



## **9 FAM 42.62 PN8 Importance of U.S. Address**

(TL:VISA-395; 04-15-2002)

INS uses the address stated on the Form DS-230, *Application for Immigrant Visa and Alien Registration*, as the alien's final destination to mail the Form I-551, *Permanent Resident Card*, to the visa recipient. It is important, therefore, that the alien furnish as complete an address as possible, including zip code. The alien may use the address of a prospective employer if there are no friends or relatives to whom Form I-551 may be forwarded.

### **9 FAM 42.62 PN8.1 Action Concerning Form DS-230, Application for Immigrant Visa and Alien Registration and Original Form OF-233, Consular Cash Receipt**

(TL:VISA-395; 04-15-2002)

The consular officer should request from the applicant Form DS-230 I and II, *Application for Immigrant Visa and Alien Registration*, and the original Form OF-233, *Cash Receipt*, issued by the cashier for the application fee. The consular officer shall initial and return Form OF-233 to the applicant.

### **9 FAM 42.62 PN8.2 Explaining Significance of Oath to Applicant**

(TL:VISA-395; 04-15-2002)

At the outset of the interview, the consular officer should inform the applicant that the interview will be based on answers given to the questions on Form DS-230 I and II, *Application for Immigrant Visa and Alien Registration*, and any others that might arise from examination of the supporting documents. The consular officer should make it clear that, after the interview is ended, the applicant will be required to swear or affirm that all statements made during the interview and on the form are true. The consular officer should also inform the applicant of the significance of such oath or affirmation. The consular officer may, in this connection, refer to Section 1001 of Title 18, U.S.C., which provides a penalty for making a false statement or using a false document in any matter within the jurisdiction of any department or agency of the U.S. Government.

## **9 FAM 42.62 PN8.3 Establishing Alien Understands Contents of Form DS-230 I and II, Application for Immigrant Visa and Alien Registration**

(TL:VISA-395; 04-15-2002)

The consular officer should next establish that it was the applicant who furnished the answers to the questions on Form DS-230 I and II, *Application for Immigrant Visa and Alien Registration*, or, if assisted by someone else, that the applicant nevertheless is fully aware of the nature of the application and the answers given and has no questions about the application. In most cases, the consular officer can accomplish this by asking the applicant a few of the questions on the form and comparing the oral responses with the written replies. Should the applicant appear to have inadequate knowledge of the contents of the application, the officer must orally go over all questions having a bearing on the applicant's eligibility to receive a visa. To discourage professional intermediaries from coaching applicants, officers should avoid establishing a set pattern in questioning applicants.

## **9 FAM 42.62 PN8.4 Correcting Form DS-230 I and II, Application for Immigrant Visa and Alien Registration, in Distinctive Ink**

(TL:VISA-395; 04-15-2002)

a. If any answers on Form DS-230 I and II, *Application for Immigrant Visa and Alien Registration*, need correction or amplification, the officer should make the corrections in ink of a distinctive color, marking each correction with a circled number for identification. The consular officer shall then expand on the applicant's declaration immediately before the place for signature by writing in the same color ink the following:

**"The corrections numbered 1 through \_\_\_\_ are part of my application."**

b. The consular officer may use a rubber stamp for this purpose.

## **9 FAM 42.62 PN8.5 Sources of Background Investigation Information Not Revealed**

(TL:VISA-59; 05-15-1992)

The consular officer must ensure that interviews be conducted so as to persuade the applicant to make full and frank disclosure of all information bearing on the application without disclosure by the officer of the actual sources of information obtained during the course of background investigations.

## **9 FAM 42.62 PN8.6 Consular Officer's Responsibility in Labor Certification Cases**

*(TL:VISA-59; 05-15-1992)*

If the applicant is applying for a visa on the basis of a job offer labor certification, or a Schedule A case not previously evaluated by the consular officer, the officer must determine that the applicant has the professional or occupational qualifications on which certification is based.